84-1371 (1)

Office-Supreme Court, U.S.
FILED
FEB 25 1985
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

FARWEST STEEL CORPORATION, Petitioner,

v.

S.A. DeSANTIS, an individual;
LAKEVIEW CHARTERS, a partnership;
WEST COAST CHARTERS, INC., a
Delaware corporation;
CARNATION COMPANY; and BANK OF
AMERICA, N.T. & S.A., Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

RIDGWAY K. FOLEY, JR.*
CYNTHIA S.C. SHANAHAN
SCHWABE, WILLIAMSON, WYATT
MOORE & ROBERTS
Suites 1600-1800, Pacwest Ctr.
1211 S.W. Fifth Avenue
Portland, Oregon 97204
(503) 222-9981

LLOYD W. WEISENSEE
JOHN R. DUDREY
WILLIAMS, FREDRICKSON, STARK,
HIEFIELD, NORVILLE &
WEISENSEE, P.C.
1600 S.W. Fourth Ave., Suite 775
Portland, Oregon 97201
(503) 222-9966

*Counsel of Record for Petitioner.

83pp

QUESTIONS PRESENTED

(i) Whether federal maritime law preempts the Washington Boat Lien Statute, R.C.W. 60.36.010?

(ii) Whether federal maritime law preempts the Washington Chattel Lien Statute, R.C.W. 60.08.010?

LIST OF PARTIES*

NOT INCLUDED IN CAPTION

Thompson Metal Fab, Inc.,
Intervenor-Plaintiff.

Shuman Equipment Co., Intervenor-Plaintiff.

Coast Crane-Body & Equipment Co.,
Intervenor-Plaintiff.

Nichols Boat & Barge Builders, Inc.,
Defendant

the Barge SEASPAN 241, aka CERES, her tackle, apparel and furniture, Defendant.

* These parties appeared before the Washington Superior Court, but none of them appeared or participated in the appeal to Court of Appeals of the State of Washington, Division II, which was certified to the Washington Supreme Court.

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties	ii
Decisions Below	1
This Court's Jurisdiction	1
Statutes Involved	2
Statement of the Case	2
1. Basis for Federal Jurisdiction	2
2. Facts and Procedural History	5
Argument	14
1. Introduction	14
2. Reasons for Granting Certiorari	15
3. Scope of Maritime Lien Act	19
4. The Washington State Lien Statutes Constitute a Legitimate Exercise of the State's Concurrent Jurisdictional Power	22
5. This Court Should Delay Ruling on this Petition Until the Ninth Circuit Renders Its Decision in the Companion Case	28
Conclusion	32
Appendix	
A. Opinion of the Supreme Court of the State of Washington	App-1
B. Ruling of the Supreme Court of the State of Washington Accepting Certification	App-17

C. Order of Certification by the Court of Appeals of the State of Washington, Division II App-20
D. Order of the Superior Court of the State of Washington in and for the County of Clark App-23
E. Text of 46 U.S. §§ 971, 975 ..... App-33
F. Text of RCW 60.36.010, 60.36.020, 60.08.010 and 61.12.162 ..... App-35

TABLE OF AUTHORITIES

Page

Cases Cited

Belfast, The
9 Wall 624, 19 L. Ed.
266 24
Farwest Steel v. DeSantis,
102 Wash 2d 487, 687
P2d 207 (1984) 1
Grow v. Steel Gas Screw Loraine K,
350 F.2d 547, 1963 A.M.C.
2044 (6th Cir. 1962) 21
Hine, The v. Trevor,
71 U.S. (4 Wall) 555,
18 L. Ed. 541 (1867) 17
Johnson v. Chicago & P. Elevator Co.,
119 U.S. 388, 30 L. Ed.
447, 7 Sup. Ct. Rep.
254 25
Knap S. & Co. v. McCaffrey,
177 U.S. 638, 44 L. Ed.
921, 20 Sup. Ct. Rep. 824
(1900) 25
Leon v. Galceran,
11 Wall 185, 20 L. Ed.
74 (1870) 25, 26, 27
Moses Taylor, The
71 U.S. (4 Wall) 411
(1867) 17
Oceana, The
233 F. 139 (E.D.N.Y.
1916), modified, 244 F.
80 (2d Cir. 1917),
cert. denied sub nom 20
Red Cross Line v. Atlantic
Fruit Co.,
264 U.S. 109, 44 S. Ct.
274, 68 L. Ed. 582 (1924) 18
Roanoake, The
189 U.S. 185, 23 S. Ct.
491, 47 L.Ed. (1903) 14

Robert W. Parsons, The
(Perry v. Haines),
191 U.S. 17, 48 L. Ed.
73, 24 Sup. Ct. Rep.
8 (1903) 25
Romero v. International
Terminal Operating Co.,
358 U.S. 354, 79 S. Ct.
468, 1959 A.M.C. 832
(1959) 17
Rounds v. Cloverport
Foundary & Machine Co.,
237 U.S. 303, 35 S. Ct.
596, 59 L. Ed. 966
(1915) 18,23,24,25
Taylor v. Carryl,
20 How. 583, 15 L. Ed.
1028, 2 Sup. Ct. Rep.
616 (1875) 24

Rules and Statutory Provisions

Federal Maritime Lien Act
46 U.S.C.§ 975 2
Judiciary Act of 1789 28
Judiciary Act of 1789,
28 U.S.C. § 1333 16,23
Merchant Marine Act of 1920,
41 Stat. 988, § 975 20
Original Lien Act of 1910,
Section 5,
36 Stat. 604 20
Supplemental Rule C,
Federal Rules of Civil
Procedure 6
1 Stat. 76-77 16
28 U.S.C. § 1257(3) 2
28 U.S.C. § 1292(b) 8
28 U.S.C. § 2101(c) 2
46 U.S.C. § 971 2,5,21
46 U.S.C. §§ 971-975 16
46 U.S.C. § 975 2,15,16,21,23,28
R.A.P. 4.2 4,12
R.C.W. 2.06.030 4,12

R.C.W. 2.06.030(d) 4
R.C.W. Chapter 60.08 10
R.C.W. 60.08.010 2,3
R.C.W. Chapter 60.36 10
R.C.W. 60.36.010 2,3,7
R.C.W. 60.36.020 2

Texts, Treatises and Other Authorities

Senate Report No. 831,
61st Cong., 2d Sess.
3-4 (1910) 25

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

FARWEST STEEL CORPORATION, Petitioner,

v.

S.A. DeSANTIS, an individual;
LAKEVIEW CHARTERS, a partnership;
WEST COAST CHARTERS, INC., a
Delaware corporation;
CARNATION COMPANY; and BANK OF
AMERICA, N.T. & S.A., Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

RIDGWAY K. FOLEY, JR.*
CYNTHIA S.C. SHANAHAN
SCHWABE, WILLIAMSON, WYATT
MOORE & ROBERTS
Suites 1600-1800, Pacwest Ctr.
1211 S.W. Fifth Avenue
Portland, Oregon 97204
(503) 222-9981

LLOYD W. WEISENSEE
JOHN R. DUDREY
WILLIAMS, FREDRICKSON, STARK,
HIEFIELD, NORVILLE &
WEISENSEE, P.C.
1600 S.W. Fourth Ave., Suite 775
Portland, Oregon 97201
(503) 222-9966

*Counsel of Record for Petitioner.

DECISIONS BELOW

The decision of the Supreme Court of the State of Washington is reported as *Farwest Steel v. DeSantis*, 102 Wash 2d 487, 687 P2d 207 (1984). The order of the Washington Supreme Court accepting certification is reproduced at pp. 17-19 of the Appendix. The order of the Court of Appeals of the State of Washington, Division II, certifying the case to the Supreme Court of the State of Washington is reproduced at pp. 20-22 of the Appendix. The order of the Superior Court of the State of Washington in and for the County of Clark is reproduced at pp. 23-32 of the Appendix.

THIS COURT'S JURISDICTION

The Supreme Court of the State of Washington rendered its decision on September 6, 1984. Petitioner, Farwest Steel, filed a timely motion for reconsideration on September 26, 1984. On

November 26, 1984, the Washington Supreme Court denied the motion for reconsideration. This petition for certiorari is timely because it is filed within 90 days of the order denying the motion for reconsideration. 28 U.S.C. § 2101(c).

This court has jurisdiction to review the judgment of the Supreme Court of the State of Washington on writ of certiorari pursuant to 28 U.S.C. § 1257(3).

STATUTES INVOLVED

This case involves various provisions of the Federal Maritime Lien Act, 46 U.S.C. §§ 971, 975, and the Washington Vessel Lien and Chattel Lien Statutes, R.C.W. 60.36.010, 60.36.020, and 60.08.010. Pertinent provisions of the federal act and the Washington statutes are reproduced at pp. 33-39 of the Appendix.

STATEMENT OF THE CASE

1. Basis for Federal Jurisdiction.

Petitioner brought an *in personam*

action in Washington Superior Court to foreclose a lien against the barge SEA-SPAN 241, aka CERES, for steel supplied to Nichols Boat and Barge Builders, Inc. for repair work. The trial court granted the barge owner's motion for summary judgment and dismissed the claim, holding Federal Maritime Law preempted the Washington Vessel Lien Statute, R.C.W. 60.36.010, and the Washington Chattel Lien Statute, R.C.W. 60.08.010.

Petitioner appealed the trial court's judgment to the Court of Appeals of the State of Washington, Division II.

In its brief to the Washington Court of Appeals, Petitioner assigned as error the trial court's order granting respondents' motion for summary judgment as to petitioner's claims. Petitioner specifically preserved the federal questions presented for review by this petition, as follows:

"ISSUES PERTAINING TO ASSIGNMENT OF ERROR"

> "1. Did the trial court err in concluding that the Washington Boat Lien Law was preempted by the Federal Maritime Lien Act? (Assignment of Error No. 1)
>
> ". . . . .
>
> "4. Did the trial court err in concluding that the Washington Chattel Lien Law was preempted by the Federal Maritime Lien Act? (Assignment of Error No. 1)"

The Washington Court of Appeals certified the case to the Washington Supreme Court, pursuant to R.C.W. 2.06.030 and R.A.P. 4.2, because the issues raised on appeal involved "fundamental and urgent matters of broad public import" (App-22).

The Washington Supreme Court concurred with the Court of Appeals conclusion that the case warranted direct review under R.C.W. 2.06.030(d) and accepted certification.

Thereafter, the Washington Supreme Court affirmed the trial court's determination that federal maritime law preempted

the Washington Vessel Lien and Chattel Lien Statutes.

2. Facts and Procedural History.

Petitioner, Farwest Steel Corporation[1] (hereinafter referred to as "petitioner" or "Farwest"), sold steel to Nichols Boat and Barge Builders (hereinafter referred to as "Nichols") for use in repairs to the barge SEASPAN 241, now known as the CERES (hereinafter referred to as "the barge"). Nichols failed to pay Farwest for part of the steel.

Farwest commenced an action *in rem* in the United States District for the District of Oregon to foreclose a maritime lien against the barge pursuant to 46 U.S.C. § 971 for "necessaries" furnished to the

---

[1]Petitioner Farwest Steel Corporation is the sole shareholder of Farwest Rebar Co., an Oregon corporation. Petitioner has no corporate parent company or affiliates.

barge (Pl. Ex. 25).[2] Farwest invoked the admiralty jurisdiction.

Pursuant to Supplemental Rule C, Federal Rules of Civil Procedure, the court authorized the issuance of a warrant for the arrest of the barge after notice to the owner and hearing. The United States Marshal took the barge into the custody of the court.

Owner moved to quash the warrant, contending that a person who furnishes materials to a repair contractor for use in the repair of a vessel does not have a maritime lien within the Federal Maritime Lien Act, 46 U.S.C. §§ 971-975 (Pl. Ex. 26), and that such a transaction is not maritime in

---

[2]"Pl. Ex." refers to exhibits submitted by petitioner in support of its motion for summary judgment. These exhibits were numbered consecutively from 1 through 29 and begin at page 397 of the Clerk's Papers, which constituted the record on review before the Washington Supreme Court.

nature and therefore outside the admiralty jurisdiction (Pl. Ex. 26).

Owner also contended that the Washington Vessel Lien Law, R.C.W. 60.36.010, cannot be enforced in admiralty, to the extent the statute permits the enforcement of liens in admiralty in cases of maritime contractor service.

The District Court concurred with the owner's contentions. By order dated November 14, 1981 (Pl. Ex. 5), Magistrate Leavy found that Farwest did not have a maritime lien, that Farwest's claim was not within the admiralty jurisdiction, and that the District Court did not have jurisdiction to enforce the lien granted by R.C.W. 60.36.010. The court allowed the motion to quash and directed the marshal to release the barge from the arrest effected by Farwest. By order dated November 18, 1981, Judge Soloman approved the November 14, 1981 order (Pl. Ex. 6).

On June 7, 1982, the District Court entered an order certifying the order quashing the warrant of arrest for interlocutory appeal under 28 U.S.C. § 1292(b) (Def. Ex. 1B).[3] On June 17, 1982, petitioner filed its petition for leave to appeal to the Court of Appeals for the Ninth Circuit (Pl. Ex. 27). On August 31, 1982, the petition for leave to appeal was denied.

Petitioner commenced an *in personam* action in the Superor Court of the State of Washington for Clark County against S.A. DeSantis, Lakeview Charters, West Coast

---

[3]"Def. Ex." refers to exhibits submitted by respondents in support of their motion for summary judgment. These exhibits were numbered consecutively from 1 through 17 and begin at page 687 of the Clerk's Papers, which constituted the record on review before the Washington Supreme Court.

Charters and Bank of America (hereinafter referred to as "respondents") (CP 1).[4]

Respondent Lakeview Charters originally contracted with Nichols for the repair of the barge (Pl. Ex. 1). Subsequently, respondent West Coast Charters succeeded to Lakeview's rights and liabilities (CP 228). Respondent DeSantis and his two children are the sole shareholders of West Coast Charters. (Unless the context requires different reference, DeSantis, Lakeview and West Coast will be referred to collectively as "owner").

Respondent Carnation Company entered into a conditional contract with West Coast Charters for the purchase of the barge (Pl. Ex. 4). Respondent Bank of America financed owner's purchase and repair of the vessel.

---

[4]"CP" refers to the Clerk's Papers which constituted the record on review before the Washington Supreme Court.

Petitioner instituted the Washington proceeding to foreclose a lien granted by the Washington Vessel Lien Law, codified in R.C.W. Chapter 60.36 (CP 1, 219). Alternatively, Farwest sought foreclosure of a chattel lien pursuant to R.C.W. Chapter 60.08 (CP 1, 219). Farwest also asserted that respondents were unjustly enriched by the steel supply by plaintiff and, consequently, plaintiff was entitled to be paid the reasonable value of the material supplied to Nichols or the enhanced value of the barge (CP 1, 219).

Farwest moved for an order appointing a receiver to take charge of the barge or the proceeds of its sale to Carnation pending the outcome of the litigation (CP 350).

Thereafter, petitioner and respondents both moved for summary judgment, alleging there was no genuine issue as to any material fact and each was entitled to judgment as a matter of law (CP 557, 603).

On July 9, 1982, the trial court granted respondents' motion for summary judgment as to petitioner's lien claims and the claim of unjust enrichment.

On November 5, 1982, a separate hearing was held on the respondents' motion for an award of attorneys fees. The respondents' motion was denied by an order dated November 15, 1982.

Final judgments were entered pursuant to the orders of July 9, 1982 and November 15, 1982 on November 15, 1982.

On November 22, 1982, petitioner filed a notice of appeal to the Court of Appeals of the State of Washington, Division II from the order and final judgment which granted respondents' motion for summary judgment.

The respondents' notice of cross-appeal, from the order and judgment which denied respondents' motion for an

award of attorney fees, was filed on November 29, 1982.

The parties submitted briefs to the Washington Court of Appeals. However, on April 10, 1984, that court issued an order of certification to the Supreme Court of the State of Washington. The Court of Appeals stated "the issues raised by this appeal involve fundamental and urgent matters of broad public import which are appropriate for disposition by the Supreme Court pursuant to R.C.W. 2.06.030 and R.A.P. 4.2" (App-22).

On April 23, 1984, the Washington Supreme Court concurred with the Court of Appeal's conclusion that the case warranted direct review and accepted certification.

On September 6, 1984, after hearing oral argument, the Washington Supreme Court affirmed the Superior Court's ruling. The court held that federal maritime law preempted the Washington Vessel Lien and

Chattel Lien Statutes as determined by the trial court.

Subsequent to the Washington Superior Court's order of dismissal judgment, the *in personam* claims in federal district court proceeded to trial. The federal trial judge overturned Magistrate Leavy's determination that the agreement between Farwest and Nichols was a non-maritime contract and concluded it was maritime in nature.

However, the trial judge also found that Nichols was not the agent of the barge's owners and was not authorized by the owners to order steel so as to bind the barge. Accordingly, the court concluded that Farwest's claims against the barge did not come within the provisions of the Maritime Lien Act. Therefore, the court dismissed Farwest's *in rem* claim against the barge and its *in personam* claim against the owners. Finally, the District Court

dismissed Farwest's claim based on Washington's vessel lien law on the ground that that law had been declared unconstitutional in *The Roanoake*, 189 U.S. 185, 23 S. Ct. 491, 47 L. Ed. 770 (1903).

Farwest appealed the District Court's judgment to the Ninth Circuit of the United States Court of Appeals. The parties have briefed the issues and oral argument has been heard. Consequently, the case is presently at issue before the Ninth Circuit and a decision is forthcoming.

ARGUMENT

1. Introduction.

The Federal Maritime Lien Act only operates to supersede those state lien statutes which purport to create rights enforceable *in rem* as to lien claims covered by the federal act. The Washington Supreme Court erroneously concluded that any state statute which creates a vessel lien for claims relating to repairs,

supplies and other necessaries is preempted by the lien act. In essence, the court held that any lien arising out of the repair of a vessel is a maritime transaction and, consequently, such a transaction can only give rise to a maritime lien enforceable *in rem* in admiralty.

As this petition will show, the Washington Supreme Court mistakenly applied the Maritime Lien Act in a fashion contrary to the intent of Congress. The effect of its decision is the deprivation of state remedies which Congress specifically recognized and preserved in 46 U.S.C. § 975.

2. Reasons for Granting Certiorari.

This case presents an excellent opportunity for this court to outline the scope of the Federal Maritime Lien Act.

The Washington Supreme Court delineated the permissible spheres of

federal and state action in a manner contrary to previous decisions of this court. The state court's failure to recognize that 46 U.S.C. § 975 saves state-created liens which are not enforceable *in rem* in admiralty obfuscates the scope of federal and state jurisdiction in this area.

This court has never held that the Federal Maritime Lien Act preempts all state vessel lien laws. In fact, this court has recognized that Congress gave the states concurrent jurisdiction.

The Judiciary Act of 1789, 28 U.S.C. § 1333, bestowed exclusive admiralty jurisdiction on the United States district courts, but saved "to suitors, in all cases, the right of a common law remedy where the common law is competent to give it." 1 Stat. 76-77. As a result of the "exclusivity" and "saving" correlates, a suitor with an *in personam* claim may bring

suit either in state court or in federal court, providing there is diversity of citizenship and the requisite jurisdictional amount. Absent the incidents of federal subject matter jurisdiction, a suitor may not sue in federal court on the theory that a maritime claim arises under the laws of the United States. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S. Ct. 468, 1959 A.M.C. 832 (1959).

The common law remedies which plaintiff may elect to have enforced in the state court, do not include the *in rem* proceeding. *The Moses Taylor*, 71 U.S. (4 Wall) 411 (1867); *The Hine v. Trevor*, 71 U.S. (4 Wall) 555, 571, 18 L. Ed. 541 (1867). However, this court has held that where a defendant's interest in a vessel is the object of an action, and the *res* is only being attacked indirectly by a garnishment or attachment, the proceeding

is cognizable to the common law and saved pursuant to the savings clause of the 1789 Judiciary Act. *Rounds v. Cloverport Foundary & Machine Co.*, 237 U.S. 303, 35 S. Ct. 596, 59 L. Ed. 966 (1915).

In *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 44 S. Ct. 274, 68 L. Ed. 582 (1924), this court described the scope of the common law remedy to which suitors are otherwise entitled, to include:

> ". . . all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. It includes remedies *in pais* as well as proceedings in court; judicial remedies conferred by statute, as well as those existing at the common law; remedies in equity, as well as those enforceable in a court of law. . . . A state may not provide a remedy *in rem* for any cause of action within admiralty jurisdiction. . . . But otherwise, the state, having concurrent jurisdiction, is free to adopt such remedies and to attach to them such incidents as it sees fit." 44 S. Ct. at 277.

Thus, the concurrent jurisdiction of state and federal courts over maritime

cases has resulted in the evolution of two distinct sources of admiralty law. Although state courts cannot enact legislation which controverts existing maritime law or interferes with the uniform scheme of the federal admiralty system, the states are free to create supplemental recoveries not otherwise available under the maritime law.

This Court should accept review of this case to remedy the error committed by the Washington State Supreme Court. The Maritime Lien Act reflects Congress's recognition and reconciliation of the concurrent state and federal presence in the field of admiralty law. The Washington Supreme Court rejected or ignored the dual power of the maritime scheme created by Congress.

3. Scope of Maritime Lien Act.

The Maritime Lien Act only supersedes state-created liens for (1) "repairs,

supplies, towage, use of dry dock or marine railway, and other necessaries" that are enforceable, (2) *in rem*, (3) in admiralty.

Section 5 of the original Lien Act of 1910, 36 Stat. 604, superseded provisions of every state vessel lien law "insofar as the same purport to create rights of action to be enforceable by proceedings *in rem* against vessels . . . ." At least one lower federal court held that the 1910 version of the act superseded all state statutes conferring liens on vessels. *The Oceana*, 233 F. 139, 146 (E.D.N.Y. 1916), modified, 244 F. 80 (2d Cir. 1917), *cert. denied sub nom.*

However, when the Lien Act was reenacted as part of the Merchant Marine Act of 1920, 41 Stat. 988, § 975 was amended to its present form, with the concomitant result that the federal lien act only operates to supersede those state

statutes that create liens enforceable *in rem* in admiralty.

Congress's 1920 amendment of 46 U.S.C. § 975, clarified the scope of federal preemption in the field of maritime liens and indicates that Congress intended no hiatus between the coverage of the lien act and state vessel lien laws.

Although states do not have to enact vessel lien laws whose coverage begins where the lien act leaves off, Congress has not forbidden such legislation. In fact, the lien act leaves states free to enact *maritime* liens as long as they are not within the scope of 46 U.S.C. § 971. *See Grow v. Steel Gas Screw Loraine K*, 350 F.2d 547, 1963 A.M.C. 2044 (6th Cir. 1962) (Michigan statute providing for vessel lien for unpaid marine insurance premiums held enforceable in admiralty).

4. The Washington State Lien Statutes Constitute a Legitimate Exercise of the State's Concurrent Jurisdictional Power.

The Washington state statutes do not purport to create rights which are covered by the federal act. However, the Washington Supreme Court concluded that the statutes are preempted by federal admiralty law. Its decision is based upon the erroneous characterization of Far West's claim as an *in rem* rather than an *in personam* action.

The court held that the enforcement of a lien against a vessel is an *in rem* action by nature and cannot be effectuated by an *in personam* proceeding with an ancillary attachment of the vessel. This holding redefines the scope of the Federal Lien Act and is in conflict with applicable decisions of this court.

Petitioner filed an *in personam* action against the owners of the vessel. The attachment proceeding directed against the vessel was ancillary to the *in personam* action and may legitimately be imposed by a state court. Such an action does not infringe upon the exclusive jurisdiction of the federal courts.

The savings clause of the Judiciary Act of 1789, 28 U.S.C. § 1333, and 46 U.S.C. § 975, establish that the states are free to enact statutes which impose liens on vessels as long as the statutory liens are enforced by suits *in personam*. However, that does not mean that a vessel is not subject to seizure, levy and execution as a result of such *in personam* lien action.

In the *Rounds v. Cloverport Foundry & M. Co.*, 237 U.S. 303, 35 S. Ct. 596, 59 L. Ed. 966 (1914), this court held that an *in personam* action against ship

owners to recover for work and materials furnished under a contract to repair and rebuild a vessel is not within the exclusive admiralty jurisdiction of the federal courts. The court stated:

> ". . . . It is well settled that in an action *in personam* the state court has jurisdiction to issue an auxiliary attachment against the vessel; and, whether or not the contract in suit be deemed to be of a maritime nature, it cannot be said that the state court transcended its authority. The proceeding *in rem* which is within the exclusive jurisdiction of admiralty is one essentially against the vessel itself as the debtor or offending thing, -- in which the vessel is itself 'seized and impleaded as defendant, and is judged and sentenced accordingly.' By virtue of dominion over the thing all persons interested in it are deemed to be parties to the suit; the decree binds all the world, and under it the property itself passes, and not merely the title or interest of a personal defendant. [Cites omitted.] Actions *in personam* with a concurrent attachment to afford security for the payment of a personal judgment are in a different category. *The Belfast*, 7 Wall 624, 19 L Ed 266; *Taylor v. Carryl*, 20 How. 583, 598, 599, 15 L Ed 1028, 1033, 1034; *The*

> *Robert W. Parsons (Perry v. Haines)*, 191 US 17, 48 L Ed 73, 24 Sup. Ct. Rep. 8. And this is not only in the case of an attachment against the property of the defendant generally, but also where it runs specifically against the vessel under a state statute providing for a lien, if it be found that the attachment was auxiliary to the remedy *in personam*. *Leon v. Galceran*, 11 Wall 185, 20 L Ed 74; *see also Johnson v. Chicago & P. Elevator Co.*, 119 US 388, 398, 399, 30 L Ed 447, 450, 451, 7 Sup. Ct. Rep. 254; *Knap S. & Co. v. McCaffrey*, 177 US 638, 646, 648, 44 L Ed 921, 925, 926, 20 Sup. Ct. Rep. 824." *Id.* at 597.

Similarly, in *Leon v. Galceran*,[5] 11 Wall 185, 78 U.S. 185, 20 L. Ed. 74 (1870), the court held that sailors who brought a suit *in personam* in the state court of Louisiana against the owner of a vessel to recover maritime wages, were entitled to utilize the process of sequestration or

---

[5]The Senate Judiciary Committee cited *Leon v. Galceran, supra*, favorably when it reported on the predecessor of the Federal Maritime Lien Act. Senate Report No. 831, 61st Cong., 2d Sess. 3-4 (1910).

attachment to bring the vessel on which the services were rendered under the dominion of the court, for the purpose of subjecting it to such judgment as might be rendered in the case.

The court stated that the writ of sequestration was issued as a mesne or conservatory process to preserve, *pendente lite*, a lien and to secure the presence of the vessel within the territorial jurisdiction of the state court until after final judgment.

The court concluded that the state court was empowered to utilize such measures as a means of effectively exercising its lawful jurisdiction by securing in advance the execution of valid personal judgments in transitory property pledged by law:

> "The only thing which the Federal Constitution and Judiciary Act of 1789 seem to have taken away from the state courts is the 'cognizance of civil causes of admiralty and

> maritime jurisdiction,' when the same are sought to be brought solely *in rem* against the offending vessel itself as a party defendant to the suit, according to the peculiar forms of the proceeding *in rem* of the admiralty courts, the judgments and sales of which are binding on the whole world, *erga omnes*.
>
> "The writ of sequestration has no analogy whatever with the admiralty process, as understood and defined by writers on admiralty.
>
> "It cannot be pretended that vessels are not liable to seizure under executions issued on judgments rendered by State courts. How, then, can it be contended that a writ of attachment or any other mesne or conservatory process, which only anticipates and subserves the writ of *fi. fa*; cannot be lawfully resorted to, when sanctioned by the State law, to prevent the departure of the vessel *pendente lite*, in order to subject it afterwards under execution to the payment of the creditor's personal judgment, for which she is legally pledged?" 11 Wall at 187.

This court should accept review to rectify the error of the Washington Supreme Court. The Washington lien statutes provide for the foreclosure of

state-created liens by the institution of an *in personam* action in state superior court.

The Washington legislature acted within the scope of its authority as defined by 46 U.S.C. § 975 and the savings clause of the Judiciary Act of 1789. Therefore, contrary to the holding of the Washington Supreme Court, the state lien statutes are not preempted by federal maritime law.

5. This Court Should Delay Ruling on this Petition Until the Ninth Circuit Renders Its Decision in the Companion Case.

As outlined above, Farwest sued in the United States District Court for the District of Oregon to foreclose a maritime lien before it commenced the action in Washington Superior Court.

The federal action was pursued *in rem* against the barge and *in personam* against

its corporate owner, West Coast Charters, Inc.; the principal of the corporate owner, S.A. Desantas; the predecessor owner, Lake View Charters; and the contractor Nichols.

The owners successfully moved to quash the seizure of the barge obtained by Farwest. Magistrate Leavy found that the federal court lacked jurisdiction over the *in rem* action because the transaction at issue was not maritime in nature.

Thereafter, the *in personam* claims proceeded to trial. The federal trial judge reversed Magistrate Leavy's determination and found that the transaction constituted a maritime contract. However, the federal court found that Farwest's claims against the barge did not come within the scope of the Maritime Lien Act, after concluding that Nichols was not the agent of the barge's owners and was not authorized by the owners to order steel so as to bind the barge.

Farwest appealed that judgment to the Ninth Circuit of the United States Court of Appeals, contending that its claims fall within the ambit of Federal Lien Act. The parties have submitted their briefs and oral argument was held in Portland, Oregon on August 5, 1984. The Ninth Circuit has not rendered its decision, but one is expected imminently.

This court should delay ruling on this petition pending the outcome of the appeal before the Ninth Circuit since that determination might change the issues before this court.

One question to be decided by the Ninth Circuit is whether the federal court's jurisdiction over Farwest's *in rem* action against the barge continued after the barge was released. If it did, the Court of Appeals will have to decide whether Farwest has a maritime lien against the barge. In order to resolve either of

these issues, the Ninth Circuit must determine whether the contract between Farwest and Nichols was maritime or non-maritime. A determination by the Ninth Circuit of the nature of that contract may change the issue presented for review by this petition.

If Farwest's claim against the barge arose out of a non-maritime contract, Farwest could not have a maritime lien against it. In that event, the Maritime Lien Act could not preempt the Washington state court's jurisdiction. Consequently, the Washington Supreme Court's decision would be rendered incorrect because it was based upon the erroneous assumption that the transaction was maritime in nature.

On the other hand, if the Ninth Circuit determines that Farwest's contract with Nichols was maritime, then the issue remains whether the Federal Maritime Lien Act preempts Washington state's lien

statutes which create rights of action to be enforced *in personam*.

Therefore, for the sake of judicial economy and the convenience of the court, Farwest respectfully requests that the court delay a decision on this petition pending the outcome of the appeal in the companion case before the Ninth Circuit.

CONCLUSION

The Washington Vessel Lien and Chattel Lien statutes are not preempted by the Federal Maritime Lien Act. Those statutes provide for the enforcement of state-created liens by instituting an *in personam* action in state superior court.

The Washington Supreme Court erred in holding that the rights granted by the state lien laws are preempted by federal admiralty law. The Washington legislature acted within the scope of its authority.

If the decision of the Washington Supreme Court is not reversed, this court will in effect ratify the Washington court's misinterpretation of the scope of the Federal Maritime Lien Act and concurrent state jurisdiction.

Respectfully submitted,

RIDGWAY K. FOLEY, JR., P.C.
CYNTHIA S.C. SHANAHAN
SCHWABE, WILLIAMSON, WYATT,
MOORE & ROBERTS

LLOYD W. WEISENSEE
JOHN R. DUDREY
WILLIAMS, FREDRICKSON,
STARK, HIEFIELD, NORVILLE
AND WIESEN, P.C.

By: _____
RIDGWAY K. FOLEY, JR., P.C.
Of Attorneys by Petitioner

FARWEST STEEL CORPORATION-Appellant,

v.

S.A. DeSANTIS, ET AL-Respondents.

DORE, J. - Farwest Steel Corporation sought to impose a lien in state court against the barge *Seaspan 241*, a/k/a/ *Ceres*, for steel supplied to Nichols Boat and Barge Builders, Inc., for repair work. The trial court granted the barge owner's motion for summary judgment and dismissed the claim, holding federal maritime law had preempted the Washington boat lien statute, RCW 60.36.010, and the Washington chattel lien statute, RCW 60.08. We agree.

FACTS

In June 1980, West Coast Charters, Inc., the owner of the barge, contracted with Nichols to do a substantial barge

repair.[1] Nichols made arrangements to purchase its steel requirements from Farwest. Farwest had delivered $434,857.83 of steel to the Nichols shipyard. Subsequently, Nichols stopped work on repair of the barge because of financial difficulties. The sum of $179,768.44 remains due and unpaid. West Coast paid Nichols all sums billed for work performed on the barge, and finished the repair contract with another contractor.

Farwest originally filed suit in federal district court in Oregon against

---

[1]The June 18, 1980 contract for repair of the barge was actually between Nichols Boat and Barge Builders, Inc., and Lakeview Charters, Inc. Between March and June 1981, all of the interest in Lakeview, including the barge, was transferred to defendant West Coast Charters, Inc. West Coast assumed the rights and liabilities of Lakeview under its contract with Nichols. West Coast ultimately paid Nichols all that was owned for work done on the Lakeview-Nichols contract and also paid Nichols for work done on the barge after West Coast became the owner. For simplicity, we refer to West Coast as the owner of the barge throughout this opinion.

the barge, Nichols and West Coast, seeking to foreclose a lien on the barge for unpaid steel under the Federal Maritime Lien Act, 46 U.S.C. §§ 971-975. Upon commencing this action, Farwest obtained an order directing the federal marshal to seize the barge. West Coast successfully moved to quash the seizure. They argued that Nichols did not act as the agent of the owner in ordering the steel from Farwest and, therefore, no lien could attach under 46 U.S.C. § 971.[2]

---

[2] 46 U.S.C. § 971 provides:

> "Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

The *in personam* claims against Nichols and West Coast were preserved for trial in the United States District Court in Oregon.

Farwest then filed the instant lawsuit in Clark County Superior Court against the barge owners, seeking to impose a lien on the barge under the Washington boat lien statute, RCW 60.36.010 and/or the Washington chattel lien statute, RCW 60.08.

Subsequent to the Superior Court's order of dismissal judgment, the *in personam* claims in federal district court proceeded to trial. The federal trial judge ruled that "Since the agreement between Farwest and Nichols concerns the furnishing of necessaries to a specific vessel, a maritime object, it follows that the agreement between Farwest and Nichols is a maritime contract." *Farwest Steel Co. v. Barge Seaspan 241*, No. 81-951-FR, slip op. and order, at 13 n.2 (D. Or. Jan. 26, 1984). The federal court entered a

judgment dismissing Farwest's claims. Farwest appealed this judgment to the Ninth Circuit of the United States Court of Appeals.

FEDERAL MARITIME LIEN ACT PREEMPTION

The Federal Maritime Lien Act preempts state lien statutes which propose to create liens enforceable by actions "in rem in admiralty against vessels for repairs, supplies, towage, . . . and other necessaries." 46 U.S.C. § 975. Farwest contends that if the steel contract was nonmaritime, RCW 60.36.020 provides an appropriate avenue to foreclose the lien

for unpaid steel,[3] as its provisions designate the builder as the agent for the owner in establishing a lien for unpaid supplies.

[1] The federal district court judgment, however, held that the steel contract was maritime in nature. Farwest is bound by this determination and may not relitigate the issue in state court. *State v. Reed*, 92 Wn.2d 271, 595 P.2d 916 *cert. denied*, 444 U.S. 930 (1979).

[2] The California court addressed a similar problem in *Stephens v.*

---

[3] RCW 60.36.020 provides:

"Such liens [boat liens created by RCW 60.36.010] may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 61.12.162."

Weyl-Zuckerman & Co., 34 Cal. App. 210, 216, 167 P. 171 (1917):

> In this case, although the action, so far as its title is concerned, is directly against the owner of the launch only, yet the plaintiffs have in their complaint gone further, and proceeded *in rem*, or against the *res* or launch itself as effectually as though they had done so directly, or *eo nomine*, by alleging their right to the lien provided by section 813 of the Code of Civil Procedure, and praying for the sale of the launch under the foreclosure of the lien for the satisfaction of the debt sued for. Call the action what we may -- *quasi in rem*, if that be the proper designation of an action in which both the person and the *rem* itself are proceeded against -- it cannot be denied that, since by such action it is sought to make the property or thing itself liable for the debt growing out of a contract for the repair thereof, the action involves a proceeding *in rem* in the sense and to the extent that jurisdiction to enforce the lien is, under the terms of the federal statute in question, entirely and solely in the federal courts of admiralty.

The present action is essentially one in rem against the barge to impress a lien for

materials used in its *repair*. By its express terms, 46 U.S.C. § 975 preempts the application of our boat lien statute to such a case. *See In re Mission Marine Assocs., Inc.*, 633 F.2d 678 (3d Cir. 1980).

Farwest next contends it has a chattel lien on the barge under RCW 60.08.010.[4] They claim this statute is not preempted by federal maritime law. We disagree. Whether asserting its claim under the boat lien or chattel lien statutes Farwest is

---

[4]RCW 60.08.010 provides:

"Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however*, That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien."

proceeding in rem against the barge to impose a lien for steel used in its repair. Federal maritime law clearly preempts the application of state statutes in this area. *Unites States v. Fishing Vessel ZARCO*, 187 F. Supp. 371 (S.D. Cal. 1960). As one author has observed:

> The Lien Act does not in terms repeal the State lien statutes: it merely "supersedes" them "to the extent that" they purport to create rights enforceable *in rem* as to the types of claims which are covered by the Lien Act. . . . In theory the State statutes are still in force as to whatever service liens are not covered by the Lien Act or the general maritime law. In fact they are either moribund or dead.

(Footnotes omitted.) G. Gilmore & C Black, *Admiralty* 544-45 (1957).

Further, even assuming the chattel lien statutes could be applied in this case, Farwest failed to perfect any lien it might have had against the barge by failing to file notice of lien in compliance with RCW 60.08.020. Moreover, the record

indicates that not all of the steel supplied by Farwest found its way into the subject barge. Farwest sold the steel to Nichols on open account. Neither the supplier nor the shipbuilder managed to maintain an accurate accounting system which would identify particular steel deliveries with the material used in the barge. On this record we must conclude that Farwest failed to establish any lien

against the barge as a matter of law.[5]

---

[5]Part of the record in this case consists of the transcript of the trial in the federal district court in Oregon. Mr. Wilson O. Nichols, President of Nichols Boat and Barge Builders, Inc., testified about the contractual relationship between his company and Farwest. The following testimony appears at pages 42-43 of that record:

> Q Now, how long has your company been doing business with Farwest Steel?
> A Approximately three years since we began and had this location, yes.
> Q Three years would take us back then to 1978?
> A Yes.
> Q And what has been your relationship with Farwest Steel? How did you operate with them?
> A By -- very simple. Call on the phone and order steel or give them a list of steel, and they would deliver it, and then we -- we work on a normal -- it was a 30-day invoice, and they were pretty good about letting it go over 30-days' collection. We went up to 90 and 120-days at times. It was always, I understood, on an open-account-type thing.
> Q So then you would pay them as you could?
> A Yes.
> Q And in connection with -- Did they invoice you for any steel

UNJUST ENRICHMENT

[3] Farwest asserts a claim for unjust enrichment against the owners of the barge. They contend the value of the barge was enhanced by materials supplied by Farwest to Nichols, and the barge owners should not enjoy the benefit of this enhanced value while Farwest goes unpaid. No contract existed between Farwest and West Coast. The facts are undisputed that West Coast, the barge owner, paid Nichols for all repair work performed on the barge. The owner received nothing more than what he paid for. There was no unjust

---

(Continued)

that was delivered to your yard in the last three years based upon it going into particular vessel, or was it just open account?

A No, it was never based on a vessel. It was always based on time -- the time when we ordered it. As a matter of some days after it came in, we got an invoice, whatever it was.

Q And you simply routinely paid that invoice?

A Yes.

enrichment. *Chandler v. Washington Toll Bridge Auth.*, 17 Wn.2d 591, 137 P.2d 97 (1943).

ATTORNEY FEES

[4] West Coast, on its cross claim, contends it is entitled to an award of attorney fees as prevailing party on Farwest's lien claim brought under the chattel lien statute. RCW 60.08.050 provides in pertinent part:

> The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action.

In *Forrester v. Craddock*, 51 Wn.2d 315, 323-24, 317 P.2d 1077 (1957), we explained that the attorney fee language in the mechanics lien statute was "not mandatory, but, by its terms, permissive, leaving the matter of allowing attorneys' fees, . . . to the discretion of the superior court." In the instant case, faced with similar language in the chattel

lien statute, we hold the matter of allowing attorney fees to be within the trial court's discretion. The trial judge denied attorney fees and we find nothing in the record to indicate he abused his discretion. We affirm such denial.

MOTION TO STAY

Recently, Farwest filed a motion to stay proceedings in state court, pending a decision on its appeal of the federal judgment. We decline to do so because we find that, irrespective of the federal appeals court decision, the Federal Maritime Lien Act in the subject case preempts application of our state lien laws. The federal preemption statute, 46 U.S.C. § 975, provides:

> This chapter shall supersede the provisions of all State statutes conferring liens on vessels, insofar as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of dry dock or marine railway, and other necessaries.

Regardless of the nature of the Farwest-Nichols contract, 46 U.S.C. § 975 expressly preempts the application of state lien laws to effect this remedy.

In the Oregon federal court both the owner and Farwest maintained that the foreclosure action was maritime in nature and the judge so found based on substantial evidence. On appeal to the Ninth Circuit, it is highly unlikely that it would reverse and hold the subject repair job nonmaritime. Even if it did, the Washington State Superior Court could give Farwest no relief through the Washington chattel lien and boat lien statutes, as the evidence is overwhelming that Farwest failed to trace steel purchases from Nichols into the repair of the subject barge as required by such statutes. As a stay of proceedings would accomplish nothing but further delay, we deny the motion.

CONCLUSION

We hold that the Clark County Superior Court in Washington correctly granted West Coast summary judgment of dismissal against Farwest on the basis that the federal maritime law had preempted the Washington boat lien and chattel lien statutes.

We deny West Coast's petition for attorney fees and Farwest's motion for a stay.

We affirm.

WILLIAMS, C.J., ROSELLINI, UTTER, BRACHTENBACH, DOLLIVER, DIMMICK, and PEARSON, J.J., and CUNNINGHAM, J. Pro Tem., concur.

THE SUPREME COURT OF WASHINGTON

FARWEST STEEL CORPORATION, Appellant, v. S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA, NT & SA, Respondents, and THOMPSON METAL FAB, INC., Intervenor-Plaintiff, v. WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA NT & SA, and SHUMAN EQUIPMENT CO., Intervenor-Plaintiff, v.	COURT OF APPEALS CAUSE NO. 6722-6-II RULING ACCEPTING CERTIFICATION

NICHOLS BOAT & BARGE BUILDERS, INC., LAKEVIEW CHARTERS; S.A. DeSANTIS; WEST COAST CHARTERS, INC.; CARNATION COMPANY; the BARGE SEASPAN 241, aka the BARGE CERES, her tackle, apparel and furniture,	)
Defendants,	)
and	)
COAST CRANE-BODY & EQUIPMENT CO.,	)
Intervenor-Plaintiff,	)
v.	)
NICHOLS BOAT & BARGE BUILDERS, INC., LAKEVIEW CHARTERS; S.A. DeSANTIS; WEST COAST CHARTERS, INC.; CARNATION COMPANY; the BARGE SEASPAN 241 aka the BARGE CERES, her tackle, apparel and furniture,	)
Defendants.	)

By order dated April 10, 1984, this appeal was certified to the Supreme Court by Division Two of the Court of Appeals pursuant to RCW 2.06.030(d). Having reviewed the Court of Appeals' file, I concur in that court's conclusion that the

case warrants direct review under the cited statute. Certification is therefore accepted. Court of Appeals cause No. 6722-6-II is hereby transferred to this court, in its entirety, for determination on the merits.

DATED at Olympia, Washington, this 23rd day of April, 1984.

/s/Jeffrey Crooks
COMMISSIONER

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

DIVISION II

FARWEST STEEL CORPORATION, Appellant, v. S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA, NT & SA, Defendants, and THOMPSON METAL FAB, INC., Intervenor-Plaintiff, v. WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA NT & SA, Defendants, and SHUMAN EQUIPMENT CO., Intervenor-Plaintiff,	)	NO. 6722-6-II ORDER OF CERTIFICATION

v.

NICHOLS BOAT & BARGE BUILDERS, INC., LAKEVIEW CHARTERS; S.A. DeSANTIS; WEST COAST CHARTERS, INC.; CARNATION COMPANY; the BARGE SEASPAN 241, aka the BARGE CERES, her tackle, apparel and furniture,

Defendants,

and

COAST CRANE-BODY & EQUIPMENT CO.,

Intervenor-Plaintiff,

v.

NICHOLS BOAT & BARGE BUILDERS, INC., LAKEVIEW CHARTERS; S.A. DeSANTIS; WEST COAST CHARTERS, INC.; CARNATION COMPANY; the BARGE SEASPAN 241 aka the BARGE CERES, her tackle, apparel and furniture,

Defendants.

THIS APPEAL raises the issue of whether the trial court erred in concluding that the Washington Boat Lien Law was preempted by the Federal Maritime Lien Law.

This Court has determined before a hearing on the merits, that the issues raised by this appeal involve fundamental and urgent matters of broad public import which are appropriate for disposition by the Supreme Court pursuant to RCW 2.06.030 and RAP 4.2. Accordingly, it is

ORDERED this this [*sic*] appeal is certified to the Supreme Court for such determination as that Court may deem appropriate.

DATED this 10th day of April, 1984.

/s/Joshua Petrich
CHIEF JUDGE

WE CONCUR:

/s/Petrie, J.
/s/Ried, J.

cc: Alex Parks
Hugh A. Knapp
C. Kent Roberts
Brian R. Heurlin
Steven L. Busick
Ridgway K. Foley, Jr.
J. Stephen Werts

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

FARWEST STEEL CORPORATION,	)	
Plaintiff,	)	No. 81-2 01982 3
vs.	)	
S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA, NT & SA,	)	ORDER
Defendants,	)	
and	)	
THOMPSON METAL FAB, INC.,	)	
Intervenor-Plaintiff,	)	
vs.	)	
WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA NT & SA,	)	
Defendants,	)	
and	)	
SHUMAN EQUIPMENT CO.,	)	
Intervenor-Plaintiff,	)	

vs.

NICHOLS BOAT & BARGE BUILDERS, INC., LAKEVIEW CHARTERS; S.A. DeSANTIS; WEST COAST CHARTERS, INC.; CARNATION COMPANY; the BARGE SEASPAN 241, aka the BARGE CERES, her tackle, apparel and furniture,

Defendants,

and

COAST CRANE-BODY & EQUIPMENT CO.,

Intervenor-Plaintiff,

vs.

NICHOLS BOAT & BARGE BUILDERS, INC., LAKEVIEW CHARTERS; S.A. DeSANTIS; WEST COAST CHARTERS, INC.; CARNATION COMPANY; the BARGE SEASPAN 241 aka the BARGE CERES, her tackle, apparel and furniture,

Defendants.

AIRWELD, INC.

Plaintiff,

vs.

No. 81-2 02161 5

LAKEVIEW CHARTERS, a partnership; S.A. DeSANTIS, an individual, and WEST COAST CHARTERS, INC., a corporation,	)
Defendants.	)

This matter came before the Court on June 29, 1982, pursuant to notice given upon Motions for Summary Judgment filed by all parties to this action. Plaintiff Farwest Steel Corporation and plaintiff-intervenors Thompson Metal Fab, Inc., Coast Crane-Body & Equipment Co., Coast Crane & Equipment RT., Inc., and Shuman Equipment Co. moved for Summary Judgment on their first claims for relief their respective complaints. Plaintiff Airweld, Inc. moved for Partial Summary Judgment as to as to [*sic*] its Third Claim for Relief. Defendants S.A. DeSantis, Lakeview Charters, West Coast Charters, Inc., and Carnation Company moved for Summary Judgment as to all claims presented by plaintiff Farwest Steel Corporation and

other intervenor plaintiffs, and also as to plaintiff Airweld's First and Second Claims for Relief. Those same defendants further moved for Partial Summary Judgment against plaintiff Airweld's Third Claim for Relief. The parties appeared at hearing on motions by their respective attorneys: Lloyd W. Weisensee, John R. Dudrey, Paul N. Daigle, and James D. Ladley for plaintiff Farwest Steel Corportation; [*sic*] Steven L. Busick for intervenor plaintiff Coast Crane-Body & Equipment Co., Coast Crane & Equipment RT., Inc., and Shuman Equipment Co.; Brian R. Heurlin for intervenor plaintiff Thompson Metal Fab, Inc.; Jeffrey L. Kleinman and Steven L. Busick for plaintiff Airweld, Inc.; Alex L. Parks, C. Kent Roberts and Hugh A. Knapp for defendants S.A. DeSantis, Lakeview Charters, West Coast Charters, Inc., Carnation Company, and the Barge SEASPAN 241, aka the Barge CERES.

All parties filed affidavits, exhibits and memoranda in support of their respective motions and oral argument was further presented by the parties. The Court considered the files, records and arguments herein and concluded as follows:

1. The plaintiffs' lien claims relate only to repairs of the Barge CERES and do not involve any construction or reconstruction of a non-maritime nature. This issue is still open with respect to the claim of Thompson Metal Fab, Inc., Coast Crane-Body & Equip. Co., & Coast Crane & Equip. RT, Inc.

2. The plaintiffs (excepting Thompson Metal Fab, Inc., Coast Crane-Body & Equipment Co., and Coast Crane & Equipment RT., Inc.) are collaterally estopped from contending in this court that they relied upon the credit of the vessel or the vessel's owners, or that they furnished materials to the barge instead of the

shipyard on an open account. Those issues were determined by the action in the U.S. District Court for the District of Oregon and cannot be relitigated in this Court.

3. Claims of lien against the barge pursuant to the Washington Boat Lien Law are pre-empted by the Federal Maritime Lien Act. While the sale of steel from Farwest to Nichols Boat & Barge Builders, Inc. on an open account basis is a non-maritime transaction, the assertions here of liens against the barge are of a maritime nature and are pre-empted by federal law. Intervenor-plaintiff Thompson's claim of a lien under the Washington Boat Lien Law based upon non-maritime work remains open.

4. The Court makes no ruling on the constitutionality of the Washington Boat Lien Law.

5. Claims with respect to the Washington Chattel Lien Law are an assertion of a claim against a vessel and

are pre-empted by the Federal Maritime Lien Act. Plaintiffs' chattel lien claims also fail because the plaintiffs dealt only with the shipyard, Nichols Boat & Barge Builders, Inc., who was not an agent or authorized to incur obligations on the barge's credit.

6. No individual liability is found on the part of the individual defendant, S.A. DeSantis.

7. The goods sold and delivered claim, Airweld's Third Claim for Relief, fails for the reason that the issue of agency has previously been litigated in Federal Court and determined adversely to the agency theory offered by plaintiff Airweld.

8. Summary judgment against the unjust enrichment claims of all parties should be allowed.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Motions for Summary Judgment of plaintiff Farwest Steel Corporation and intervenor plaintiffs Thompson Metal Fab, Inc., Coast Crane-Body & Equipment Co., Coast Crane & Equipment RT., Inc., and Shuman Equipment Co. are denied.

2. The Motion for Partial Summary Judgment of plaintiff Airweld, Inc. is denied.

3. Defendants' Motion for Partial Summary Judgment against Airweld's Third Claim for Relief is allowed.

4. Defendants' Motion for Summary Judgment is allowed as to the claims of plaintiff Farwest Steel Corporation, plaintiff intervenors Coast Crane-Body & Equipment Co., Coast Crane & Equipment RT., Inc., and Shuman Equipment Co., and is further allowed as to intervenor plaintiff Thompson Metal Fab's First and Second Claims for Relief.

5. Defendants' Motion for Summary Judgment as to intervenor plaintiff Thompson Metal Fab's & Coast Crane-Body and Equipment Co. & Coast Crane & Equipment RT., Inc. Third Claim for Relief (Washington Boat Lien for non-maritime work is denied.

6. Pursuant to stipulation of the parties, the right to and the claims for attorneys' fees by the prevailing parties are reserved for subsequent presentation to the Court by motion.

7. The Summary Judgment to be entered herein shall award to defendants their costs and disbursements incurred herein, reserving the issue of attorneys' fees for subsequent presentation by motion.

8. Upon resolution of the attorneys'

fees issue, defendants shall prepare and submit a cost bill and final judgment.

DONE IN OPEN COURT this 9 day of July, 1982.

/s/Tom Lodge
Hon. Thomas Lodge
Superior Court Judge

PRESENTED BY:

C. Kent Roberts
Parks, Montague, Allen & Greif
1200 Jackson Tower
Portland, Oregon 97205
Telephone: (503) 224-4840
Of Attorneys for Defendants

Hugh A. Knapp
Knapp, O'Dell & Pinkerton
430 N.E. Everett Street
Camas, Washington 98607
Telephone: (206) 834-4611

46 USC § 971. Persons entitled to lien

Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

June 5, 1920, c.250 § 30, Subsec. P, 41 Stat. 1005.

46 USC § 975. State statutes superseded

This chapter shall supersede the provisions of all State statutes conferring liens on vessels, insofar as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies,

towage, use of dry dock or marine railway, and other necessaries.

June 5, 1920, c.250 § 30, Subsec. T, 41 Stat. 1006.

RCW 60.36.010 Liens created. All steamers, vessels and boats, their tackle, apparel and furniture, are liable -

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for

supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these

several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued.

60.36.020. Actions to enforce liens

Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 61.12.162.

RCW 60.08.010 Lien authorized. Every person, firm or corporation who shall have

performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however,* That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien.

61.12.162. Judicial foreclosure of personal property liens.

The provisions of chapter 61.12 RCW, as now or hereafter amended, so far as the same shall be applicable, shall govern in actions for the judicial foreclosure of

liens on personal property excluded by RCW 62A.9-104 from the provision of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed upon his lien; and if there be a separate obligation in writing to pay the same, secured by said lien, he may bring suit upon such separate promise. When he proceeds on the promise, if there be a specific agreement therein contained, for the payment of a certain sum, or there is a separate obligation for the said sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon said promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied.

Office-Supreme Court, U.S.
FILED
MAR 25 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1371

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

FARWEST STEEL CORPORATION, Petitioner,

v.

S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA, N.T. & S.A., Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

ALEX L. PARKS*
C. KENT ROBERTS
PARKS, MONTAGUE, ALLEN & GREIF
Suite 800, American Bank Building
621 S.W. Morrison Street
Portland, Oregon 97205
(503) 224-4840

HUGH A KNAPP
KNAPP, O'DELL & PINKERTON
430 N.E. Everett Street
Camas, Washington 98607
(206) 834-4611

*Counsel of Record for Respondents

BEST AVAILABLE COPY

27pp

LIST OF PARTIES

Petitioner states in a footnote under "List of Parties" that the Barge SEASPAN 241, aka CERES, her tackle, apparel and furniture, was among the parties appearing before the Washington Superior Court, but that it (among others) did not appear or participate in the appeal to the Court of Appeals of the State of Washington, Division II, which was certified to the Washington Supreme Court.

This is not accurate. Counsel for Respondents appeared and participated on behalf of the barge, in rem, both in the appeal to the Court of Appeals of the State of Washington, Division II, and before the Washington Supreme Court.

Petitioner concedes (Petition, p.10) that it instituted the Washington proceeding to foreclose a lien [against the barge] granted by the Washington Vessel

Lien Law, and, alternatively, that it sought foreclosure of a chattel lien pursuant to R.C.W. Chapter 60.08. The fact that the caption of Petitioner's proceeding in Washington did not specifically name the barge is immaterial where the contents of its pleadings and the thrust of its position constitutes an attempt at foreclosure in rem. See, Stephens v. Weyl-Zuckerman & Co., 34 Cal. App. 210, 216, 167 P. 171 (1917); In re Mission Marine Assocs., Inc., 633 F.2d 678 (3d Cir. 1980); United States v. Fishing Vessel ZARCO, 187 F. Supp. 371 (S.D. Cal. 1960).

TABLE OF CONTENTS

	Page
List of Parties	i
Argument	1
1. Introduction	1
2. Reasons for Refusing to Grant Certiorari	1
3. There is no reason for this Court to delay ruling on this Petition until the Ninth Circuit renders its decision in the companion case	8
Conclusion	9
Appendix	
A. Affidavit of Lloyd W. Weisensee in Support of Motion for Order to Show Cause	App-1
B. Complaint for Foreclosure of Chattel Lien and Injunction	App-4

TABLE OF AUTHORITIES

Page

Cases Cited

In re Mission Marine Assocs., Inc., 633 F.2d 678 (3d Cir. 1980)..... ii,6
Leon v. Galceran, 11 Wall 185, 20 L.Ed. 74 (1870) 3
Roanoke, The 189 U.S. 185, 23 S.Ct. 491, 47 L.Ed. (1903)..... 7
Rounds v. Cloverport Foundary & Machinery Co., 237 U.S. 303, 35 S.Ct. 596, 59 L.Ed. 966 (1915)..... 3,6
Stephens v. Weyl-Zuckerman & Co., 34 Cal. App. 210, 216, 167 P. 171 (1917)..... ii,6
United States v. Fishing Vessel ZARCO, 187 F. Supp. 371 (S.D. Cal. 1960)..... ii,6

Rules and Statutory Provisions

Federal Maritime Lien Act
46 U.S.C. § 972..... 8
46 U.S.C. § 975..... 1
R.C.W. Chapter 60.08..... ii
R.C.W. 60.08.010 5
R.C.W. 60.36.010..... 4,5,7
R.C.W. 60.36.020..... 7
U.S. Supreme Court Rule 17..... 1,9
U.S.S.C. Rule 17(a)..... 2
U.S.S.C. Rule 17(b)..... 2
U.S.S.C. Rule 17(c)..... 2

No. 84-1371

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

FARWEST STEEL CORPORATION, Petitioner,

v.

S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; WEST COAST CHARTERS, INC., a Delaware corporation; CARNATION COMPANY; and BANK OF AMERICA, N.T. & S.A., Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

ARGUMENT

1. Introduction

The Washington Supreme Court correctly concluded that any state statute which creates a lien on a vessel for claims relating to repairs, supplies or other necessaries is preempted by the Federal Maritime Lien Act. The Washington Supreme Court correctly applied the Maritime Lien Act in a fashion entirely consonant with the intent of Congress. There was no deprivation of state remedies under 46 U.S.C. § 975.

2. Reasons for Refusing to Grant Certiorari

Rule 17 of the U.S. Supreme Court Rules prescribes that a review on writ of certiorari is a matter of judicial discretion and will be granted only when there are special and important reasons therefor, and indicates the character of reasons that will be considered.

Subsection (a) of Rule 17 refers to decisions of federal courts of appeal and is inapplicable to the instant Petition.

Subsection (b) refers to a decision by a state court of last resort in conflict with the decision of another state court of last resort or of a federal court of appeals. The decision of the Washington Supreme Court in this proceeding is not in conflict with the decision of another state court of last resort nor of a federal court of appeals... and the Petition fails to cite any authority in support of review on this basis.

Subsection (c) reads in relevant part:

> When a state court...has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with the applicable decisions of this Court.

The Petition does not claim or assert that the Washington Supreme Court has decided an important question of federal law

which has not been, but should be, settled by this Court. To the contrary, the thrust of the Petition is that the Washington Supreme Court has decided a federal question in a way in conflict with the applicable decisions of this Court, citing inter alia, Rounds v. Cloverport Foundary & Machinery Co., 237 U.S. 303, 35 S. Ct. 596, 59 L.Ed. 966 (1915) and Leon v. Galceran, 11 Wall 185, 78 U.S. 185, 20 L.Ed. 74 (1870).

Petitioner asserts (Petition, p. 23):

> Petitioner filed an in personam action against the owners of the vessel. The attachment proceeding directed against the vessel was ancillary to the in personam action and may legitimately be imposed by a state court. Such an action does not infringe upon the exclusive jurisdiction of the federal court.

This assertion is palpably erroneous.

Petitioner's original Complaint in the Clark County Superior Court alleged, in part:

XI

> Pursuant to the provisions of R.C.W. 60.36.010, Plaintiff is entitled to a lien on the barge and to have the same seized and sold and the proceeds applied to satisfy Plaintiff's lien.

In the Prayer to that Complaint, Petitioner asked:

* * *

> 2. That the Court decree that Plaintiff has a valid subsisting lien on the barge SEASPAN 241, also known as CERES:

* * *

> 5. That the Court order the Barge SEASPAN 241, also known as CERES, to be seized and sold by the sheriff and from the proceeds of sale to pay and satisfy said lien of the Plaintiff; * * *

Petitioner's Amended Complaint in the Clark County Superior Court contained the same identical allegations.

Petitioner did, in the course of the proceedings in the Washington trial court, ask that a restraining order be issued to defendants S.A. DeSantis, Lakeview Charters,

and West Coast Charters, Inc. restraining and enjoining them from selling, assigning, conveying, transferring or mortgaging any interest in and to the barge to a third party and/or removing it from the jurisdiction of Clark County, Washington.

The affidavit in support of Petitioner's application for a restraining order, executed by Lloyd Weisensee, one of Petitioner's counsel, asserted that the purpose of the restraining order was to "protect and ensure plaintiff's lien rights". Further, that the purpose was only to "prevent the defendants personally from any act which would tend to interfere with or impair plaintiff's lien rights asserted under RCW 60.08.010 and RCW 60.36.010".

At no time did Petitioner request, in the Washington state court proceedings, that the barge be attached to afford security for the payment of any personal judgment which it might later be able to

secure against the individual defendant owners of the barge. The Washington Trial and Supreme Courts correctly recognized petitioner's action as an attempt to foreclose an in rem lien claim. See In re Mission Marine Assocs., Inc., supra; United States v. Fishing Vessel ZARCO, supra, and Stephens v. Weyl-Zuckerman & Co., supra.

Even assuming, for the purposes of argument, that Rounds was rightly decided, and that in appropriate circumstances a plaintiff could secure a pre-judgment attachment in a suit in personam based upon a claim for payment of materials furnished to repair a vessel, Petitioner did not ask for a pre-judgment attachment of the barge. Moreover, the trial court found (and the Washington Supreme Court affirmed) that, as a matter of fact, Petitioner was not entitled to judgement in personam against respondent owners of the barge because there was never any

direct contractual relationship between Petitioner and the respondent owners of the barge. Instead, Petitioner dealt only with the shipyard contractor and sold the materials to the shipyard contractor on open account. Only if R.C.W. 60.36.010(2) applied could Petitioner "bootstrap" itself into a valid in personam claim by relying on that portion of that statute providing that "every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020..." Here, however, Petitioner was precluded from reliance upon that portion of the statute because of the holding in The Roanoke, 189 U.S. 185, 23 S.Ct. 491, 47 L.Ed. 770 (1903).

3. There is no reason for this Court to delay ruling on this Petition until the Ninth Circuit renders its decision in the companion case.

Notwithstanding Petitioner's arguments to the contrary (Petition, P. 31-32), it is immaterial whether the contract between Petitioner and Nichols Boat & Barge Builders, Inc. [the shipyard contractor] was maritime or non-maritime. The seminal question is whether or not the facts support a conclusion that Nichols....the only party with whom Petitioner had any contractual dealings...was one of the "persons" presumed under 46 U.S.C. § 972 to have authority from the owner to procure repairs, etc. And here, the U.S. District Court and the Washington courts all concluded based upon the facts that Nichols was not...." the managing owner, ship's husband, master, or any persons to whom the management of

the vessel at the port of supply is intrusted.***"

CONCLUSION

Petitioner cannot bring itself within the ambit of Rule 17.

The Washington Supreme Court has not decided a federal question in a way in conflict with applicable decisions of this Court.

The Washington Supreme Court was correct in its interpretation of the scope of the Federal Maritime Lien Act and concurrent state jurisdiction.

The Petition should be denied.

Respectfully submitted,

ALEX L. PARKS
C. KENT ROBERTS
PARKS, MONTAGUE, ALLEN & GREIF

HUGH A. KNAPP
KNAPP, O'DELL & PINKERTON

By: /S/
ALEX L. PARKS
Of Attorneys for Respondents

IN THE SUPERIOR COURT OF

THE STATE OF WASHINGTON

FOR THE COUNTY OF CLARK

FARWEST STEEL CORPORATION,	)	
Plaintiff,	)	No. 812019823
v.	)	AFFIDAVIT OF LLOYD W. WEISENSEE IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE
S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; and WEST COAST CHARTERS, INC., a Delaware corporation,	)	
Defendants.	)	

STATE OF OREGON)
) ss.
County of Multnomah)

I, LLOYD W. WEISENSEE, being first duly sworn depose and state that I am an attorney admitted to practice in Oregon and am one of the counsel for Farwest Steel Corporation in this matter; defendants have no office, place of business, or assets within the state of Washington, except the barge SEASPAN 241, aka CERES.

I further have reason to believe that

the barge SEASPAN 241, aka CERES, is the only asset of the defendant West Coast Charters, Inc. I am informed and believe that defendants have a proposed agreement with the Carnation Company to sell the barge to the Carnation Company, whereupon the barge would be moved from Clark County, Washington.

To protect and ensure plaintiff's lien rights this court should issue a restraining order prohibiting any act of sale, etc., to Carnation Company or anyone, or movement of the barge until and except upon order of this court.

The barge is presently in custody of the U. S. Marshal pursuant to a warrant of arrest issued by the United States District Court for the District of Oregon. The restraining order would not be an assumption of custody of the barge or an attempt to interfere with the in rem jurisdiction of the U.S. Court, but only prevent the de-

fendants personally from any act which would tend to interfere with or impair plaintiff's lien rights asserted under RCW 60.08.010 and RCW 60.36.010.

Attached hereto are true copies of the affidavits of Stan Zeggert (Exhibit A) and Gene Sage (Exhibit B). Said affidavits verify that plaintiff delivered steel which was incorporated into defendants' barge.

Further deponent sayeth not.

/s/ Lloyd W. Weisensee
Lloyd W. Weisensee

Subscribed and sworn to before me this 21st day of October, 1981.

/s/ Brenda S. Wilcox
Notary Public for Oregon
My Commission Expires: 11-18-82

IN THE SUPERIOR COURT OF

THE STATE OF WASHINGTON

FOR THE COUNTY OF CLARK

FARWEST STEEL CORPORATION,	)	
Plaintiff,	)	No. 812019823
v.	)	COMPLAINT FOR FORECLOSURE OF CHATTEL LIEN AND INJUNCTION
S.A. DeSANTIS, an individual; LAKEVIEW CHARTERS, a partnership; and WEST COAST CHARTERS, INC., a Delaware corporation,	)	
Defendants.	)	

Plaintiff alleges:

FIRST CLAIM FOR RELIEF

I.

Plaintiff is an Oregon corporation with its offices and principal place of business in Eugene, Oregon.

II.

Defendant WEST COAST CHARTERS, INC., is a Delaware corporation. Defendant S.A. DeSANTIS is a shareholder, officer and managing agent of WEST COAST CHARTERS,

INC. The defendants are the owners, operators and managers of the Barge SEASPAN 241, also known as the Barge CERES. The barge is now located within Clark County, Washington, and has been at all times material herein.

III.

On or about August 29, 1980, Plaintiff commenced delivery of steel plate, angles and bars to Nichols Boat & Barge Builders, Inc., at Vancouver, Clark County, Washington, for use in repair and reconstruction of the barge. Plaintiff furnished materials for use in the barge having an agreed reasonable value of $434,857.83. The sum of $179,768.44 remains due and unpaid.

IV.

The Plaintiff had heretofore demanded of Defendants that they pay to Plaintiff the aforementioned amount, but Defendants have neglected and refused to pay the same or any part thereof.

V.

That within sixty days from the date of delivery of such property to the Defendants, Plaintiff filed in the office of the Auditor of Clark County, Washington, a lien notice, the same being instrument No. 8110220212, a copy of which is attached hereto, marked Exhibit A, and by reference incorporated herein as if fully set forth.

VI.

That less than nine months have elapsed between the filing of said lien notice and the commencement of this action.

SECOND CLAIM FOR RELIEF

Plaintiff alleges:

VII.

Plaintiff realleges and incorporates paragraphs I through VI of its First Claim for Relief.

VIII.

Defendants have been unjustly enriched by the incorporation of the steel supplied

by Plaintiff, and Plaintiff is entitled to be paid the reasonable value of the steel, or the enhanced value of the barge, whichever is greater, not to exceed $179,768.44.

THIRD CLAIM FOR RELIEF

Plaintiff alleges:

IX.

Plaintiff realleges and incorporates paragraphs I, II, IV and V of its First Claim for Relief.

X.

On or about August 29, 1980, Plaintiff commenced delivery of steel plates, angles and bars to Nichols Boat & Barge Builders, Inc., at Vancouver, Clark County, Washington, for use in construction, alteration and equipment of the barge. Plaintiff furnished materials for use in the barge having an agreed and reasonable value of $434,857.83. The sum of $179,768.44 remains due and unpaid.

XI.

Pursuant to the provisions of R.C.W. 60.36.010, Plaintiff is entitled to a lien on the barge and to have the same seized and sold and the proceeds applied to satisfy Plaintiff's lien.

FOURTH CLAIM FOR RELIEF

Plaintiff alleges:

XII.

Plaintiff realleges and incorporates paragraphs I through IV of its First Claim for Relief.

XIII.

The Plaintiff is informed and believes, and therefore, alleges that the Defendants have a proposed agreement with the Carnation Company to sell the barge, and unless restrained, the barge would be removed from the jurisdiction of Clark County, Washington. There is no plain, adequate or speedy remedy at law available to the Plaintiff, and the Plaintiff will suffer irreparable

damage unless the Defendants are restrained from selling, assigning, conveying, transferring, or mortgaging any interest in the barge, or moving the barge SEASPAN 241, also known as CERES, from Clark County, Washington, pending trial of this case or further order of this Court.

WHEREFORE, Plaintiff prays:

1. That Plaintiff have judgment against Defendants for the sum of $179,768.44, with interest from June 29, 1981;

2. That the Court decree that Plaintiff has a valid subsisting lien on the Barge SEASPAN 241, also known as CERES;

3. That Plaintiff be granted a temporary injunction during the pendency of this proceeding, restraining the Defendants from selling, assigning, conveying, transferring or mortgaging any interest in and to the Barge SEASPAN 241, also known as CERES, to a third party

and/or removing said barge from the jurisdiction of Clark County;

4. That Plaintiff be granted a permanent injunction restraining the Defendants from selling, assigning, conveying, transferring or mortgaging any interest in and to the Barge SEASPAN 241, also known as CERES, to a third party and/or removing it from the jurisdiction of Clark County.

5. That the Court order the Barge SEASPAN 241, also known as CERES, to be seized and sold by the sheriff and from the proceeds of sale to pay and satisfy said lien of the Plaintiff; and

6. For such other and further relief as may be just and proper.

DATED this 23rd day of October, 1981.

/s/ JAMES D. LADLEY
JAMES D. LADLEY, of
Counsel for Plaintiff